



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Sacramento Area Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4706

December 17, 2008

Ms. Deborah Condon
Chief, Environmental Support Section
California Department of Water Resources
Division of Flood Management
2825 Watt Avenue, Suite 100
Sacramento, California 95821-9000

Dear Ms. Condon:

Thank you for the opportunity to review the Initial Study/Proposed Mitigated Negative Declaration for the Cache Creek North Levee Setback Project-Critical erosion Site Levee Mile (LM) 39L and LM 4.2L. Enclosed is a list of National Marine Fisheries Service's comments, concerns, and recommendations.

Please contact Madelyn Martinez at (916) 930-3615, or via e-mail at Madelyn.Martinez@noaa.gov, if you have any questions regarding this letter.

Sincerely,

Maria Rea
Supervisor, Sacramento Area Office

Enclosure

cc: Copy to file ARN 151422SWR2007SA00144
NMFS-PRD, Long Beach, California
UFWS: Douglas_Weinrich@fws.gov, Jennifer_Hobbs@fws.gov, and
Jeremy_Redding@fws.gov
DFG: ghobgood@dfg.ca.gov



**NOAA'S NATIONAL MARINE FISHERIES SERVICE COMMENTS
FOR THE
INITIAL STUDY/PROPOSED MITIGATED NEGATIVE DECLARATION FOR THE
CACHE CREEK NORTH LEVEE SETBACK PROJECT-CRITICAL EROSION SITE
LEVEE MILE (LM) 3.9L AND LM 4.2L**

1. The following Federally listed species (Evolutionarily Significant Units (ESU) or Distinct Population Segments (DPS)) and designated critical habitat occur in the action area and may be affected by the proposed project:

Central Valley spring-run Chinook salmon ESU

(*Oncorhynchus tshawytscha*) threatened (June 28, 2005, 70 FR 37160)

Central Valley spring-run Chinook salmon designated critical habitat

(September 2, 2005, 70 FR 52488)

Central Valley steelhead DPS

(*Oncorhynchus mykiss*) threatened (January 5, 2006, 71 FR 834)

Central Valley steelhead designated critical habitat

(September 2, 2005, 70 FR 52488)

Southern DPS of North American green sturgeon

(*Acipenser medirostris*) threatened (April 7, 2006, 71 FR 17757)

2. You should be aware that the Pacific Fisheries Management Council has identified Essential Fish Habitat (EFH) for the Pacific salmon fishery in Amendment 14 to the Pacific Coast Salmon Fishery Management Plan. This EFH designation includes habitat found in the action area (Sacramento River Hydrologic Unit – 18020109).
3. Under Initial Study/Mitigated Negative Declaration (IS/MND) section 2.3.1 *Erosion Sites at LM 3.9L and 4.2L*, a retaining wall would be constructed adjacent to a small portion of the levee setback at Levee Mile (LM) 4.2 left bank looking downstream (L). NMFS would like more details regarding the retaining wall (*i.e.*, whether it is a bentonite slurry wall or cement wall, etc.) and its construction methodology in order to accurately determine the effects. If the project includes construction of a bentonite slurry wall, a contingency plan for slurry spill should be developed for our review. Bentonite is detrimental to aquatic organisms and habitats, and the potential of a bentonite spill poses a risk to the aquatic environment. Thus, we would request that any spill contingency plan include NMFS in the calling tree if a spill occurs and a list of measures to cleanup the spill. Information provided to NMFS should include time and date of the spill, area of impact, volume of the spill, the river flow, pictures of the spill, and post pictures of the

cleanup. The information should be provided in a report to NMFS within 30 days of any spill.

4. Under IS/MND section 2.3.3 Construction Schedule, the construction of the setback levee would occur between June 15 and October 31, 2009. NMFS recommends that the instream construction activities occur between July 1 and October 1, 2009 when listed anadromous species are least likely to occur in the project area.
5. Under IS/MND section 2.4 *Project Operations and Maintenance*, NMFS is concerned over the maintenance activities that may occur on the setback levee. We are concerned over the burning/and/or mowing on the levee to minimize vegetation. Based on our understanding of setback levees, setback levees are built to allow natural river flow to meander and provide natural flooding and vegetation to occur in the area on the waterside of the levee while protecting the public safety. The removal of vegetation and maintaining the vegetation at minimal growth does not provide shaded riverine habitat for refugia and rearing. NMFS recommends providing a vegetation plan and alternative operation and maintenance plan to minimize long-term effects to riparian and aquatic habitat and listed species.
6. On pages 2-5 through 2-9 of the IS/MND, the project design shows notches that would be created on the existing levees to allow drainage. The following are NMFS' concerns regarding the notches:
 - Purpose of the notches – NMFS is unclear of the purpose of the notches; whether they are being created to allow for drainage during the construction activities, or drainage during high flows throughout the life of the project.
 - Location and number of notches – If the notches are for drainage throughout the life of the project, NMFS recommends that the locations of the notches be re-evaluated. We find the present locations and numbers of the notches (such as the single notch in the LM 4.2L site), may result in the stranding of listed fish.

Memorandum

Date: DEC 10 2008

To: Ben Carter, President
Central Valley Flood Protection Board
3310 El Camino Avenue, Room LL40
Sacramento, California 95821

From: Department of Water Resources

Subject: Proposed Resolution of Necessity

The Board's Staff requests that one parcel of real property, designated as Parcel No. 13668 be obtained by eminent domain proceedings. The parcel is owned by Margrit Boyd, Trustee of the Survivor's Trust Under The Steven and Margrit Boyd Family Revocable Trust Dated August 23, 2000. The proposed Resolution of Necessity with description of the parcel is attached. Also attached is a drawing of the parcel showing the location of the property. The following is submitted in support of the findings of necessity referred to in Sections 1240.030 and 1245.230 of the Code of Civil Procedure for the acquisition of said parcel.

The land is necessary as part of the Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L. This project requires acquisition of **1.97 acres of permanent levee and flood control easement and utility easement, and 0.99 acre of temporary construction easement** over the subject property. This is a cooperative project involving the Central Valley Flood Protection Board (Board) and the U.S. Army Corps of Engineers (Corps).

Set-back Levee construction work is to be performed at this site, designated as Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L. By cooperative agreement the Central Valley Flood Protection Board (Board), is responsible for acquisition of all lands, easements and rights of way for Project purposes. Under state law the Board acquires property under the name of the Sacramento and San Joaquin Drainage District.

The landowner has been unwilling to accept the Board's offer to purchase an easement which is the subject of this requested Resolution of Necessity.

Ben Carter

DEC 10 2008

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A current information sheet noting the status of negotiations with the property owner affected by the proposed Resolution of Necessity is attached.

I recommend proceeding with acquisition of the above parcel by eminent domain so that the Board may assure the Corps that all lands, easements, and rights of way for project purposes have been acquired.

If you have any questions regarding this matter, please contact Paul Farris, Chief, Real Estate Branch at (916) 653-5815.



for Jay Punia
Executive Officer

Attachments

Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L
YOLO COUNTY

Resolutions of Necessity for the January 16, 2009 Central Valley Flood Protection Board meeting.

<u>R.O.N. NO.</u>	<u>Landowner</u>	<u>Parcel No.</u>
08-23	Margrit Boyd, Trustee of the Survivor's Trust Under The Steven and Margrit Boyd Family Revocable Trust Dated August 23, 2000	13668 (APN 027-170-39-1)

AGENDA ITEM FOR CENTRAL VALLEY FLOOD PROTECTION BOARD MEETING
TO BE HELD January 16, 2009
(Submitted by Paul Farris, Division of Engineering, Real Estate Branch)

EMERGENCY EROSION SITES PROJECT, CACHE CREEK, RIVER MILES 3.9L
AND 4.2L

Consider approval of Resolution of Necessity No. 08-23 to acquire from Margrit Boyd, Trustee of the Survivor's Trust under The Steven and Margrit Boyd Family Revocable Trust Dated August 23, 2000, 1.97 acres of Permanent Levee and Flood Control Easement and 0.99 acre of Temporary Construction Easement.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 08-23

RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY OR
INTEREST IN REAL PROPERTY BY EMINENT DOMAIN

Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L

WHEREAS, the hereinafter described property, located in the County of Yolo, is required as part of the Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L; and

WHEREAS, the Central Valley Flood Protection Board acting in the name of San Joaquin and Sacramento Drainage District, has attempted, but has been unable to negotiate the acquisition of the property at the appraised value; and

WHEREAS, said property is to be acquired by eminent domain pursuant to Water Code, Sections 8590, et seq., and Code of Civil Procedure, Sections 1230.010, et seq.

NOW, THEREFORE, BE IT RESOLVED that The Central Valley Flood Protection Board, acting in the name of the Sacramento and San Joaquin Drainage District, after notice and hearing pursuant to Code of Civil Procedure Section 1245.235, finds and determines and hereby declares that:

- (1) The public interest and necessity require the proposed project;
- (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (3) The property described in the Resolution is necessary for the proposed project;
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record; and

BE IT FURTHER RESOLVED, the People of the State of California, acting by and through The Central Valley Flood Protection Board, in the name of the Sacramento and San Joaquin Drainage District, are hereby authorized and empowered to acquire through the power of eminent domain, **1.97 acres of Permanent Levee and Flood Control Easement and Utility Easement and 0.99 acre of Temporary Construction Easement**, as required for project purposes. Said property is situated in the County of Yolo, State of California. A description of the property and the rights to be acquired are attached as Exhibits A and B to this Resolution.

The foregoing Resolution was adopted by The Central Valley Flood Protection Board,
State of California at Sacramento, California, on January 16, 2009.

Ben Carter, President

Date: _____

Maureen Doherty, Secretary

Date: _____

Approved as to Legal Form
and Sufficiency

Nancy Finch, Counsel for The Central
Valley Flood Protection Board

Date: _____

Memorandum

DATE: DEC 10 2008

To: Ben Carter, President
Central Valley Flood Protection Board
3310 El Camino Avenue, Room LL40
Sacramento, California 95821

From: Department of Water Resources

Subject: Proposed Resolution of Necessity

The Board's Staff requests that one parcel of real property, designated as Parcel No. 13669 be obtained by eminent domain proceedings. The parcel is owned by Margrit Boyd, an unmarried woman. The proposed Resolution of Necessity with description of the parcel is attached. Also attached is a drawing of the parcel showing the location of the property. The following is submitted in support of the findings of necessity referred to in Sections 1240.030 and 1245.230 of the Code of Civil Procedure for the acquisition of said parcel.

The land is necessary as part of the Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L. This project requires acquisition of **0.06 acre of permanent levee and flood control easement** over the subject property. This is a cooperative project involving the Central Valley Flood Protection Board (Board) and the U.S. Army Corps of Engineers (Corps).

Set-back Levee construction work is to be performed at this site, designated as Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L. By cooperative agreement The Central Valley Flood Protection Board (Board), is responsible for acquisition of all lands, easements and rights of way for Project purposes. Under state law the Board acquires property under the name of the Sacramento and San Joaquin Drainage District.

The landowner has been unwilling to accept the Board's offer to purchase an easement which is the subject of this requested Resolution of Necessity.


A current information sheet noting the status of negotiations with the property owner affected by the proposed Resolution of Necessity is attached.

Ben Carter

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I recommend proceeding with acquisition of the above parcel by eminent domain so that the Board may assure the Corps that all lands, easements, and rights of way for project purposes have been acquired.

If you have any questions regarding this matter, please contact Paul Farris, Chief, Real Estate Branch at (916) 653-5815.



for Jay Punia
Executive Officer

Attachments

Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L
YOLO COUNTY

Resolutions of Necessity for the January 16, 2009 Central Valley Flood Protection Board meeting.

<u>R.O.N. NO.</u>	<u>Landowner</u>	<u>Parcel No.</u>
08-24	Margrit Boyd, An Unmarried Woman	13669 (APN 027-170-02-1)

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NO. 08-24

RESOLUTION OF NECESSITY
TO ACQUIRE CERTAIN REAL PROPERTY OR
INTEREST IN REAL PROPERTY BY EMINENT DOMAIN

Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L

WHEREAS, the hereinafter described property, located in the County of Yolo, is required as part of the Emergency Erosion Sites Project, Cache Creek, River Miles 3.9L and 4.2L; and

WHEREAS, the Central Valley Flood Protection Board acting in the name of San Joaquin and Sacramento Drainage District, has attempted, but has been unable to negotiate the acquisition of the property at the appraised value; and

WHEREAS, said property is to be acquired by eminent domain pursuant to Water Code, Sections 8590, et seq., and Code of Civil Procedure, Sections 1230.010, et seq.

NOW, THEREFORE, BE IT RESOLVED that The Central Valley Flood Protection Board, acting in the name of the Sacramento and San Joaquin Drainage District, after notice and hearing pursuant to Code of Civil Procedure Section 1245.235, finds and determines and hereby declares that:

- (1) The public interest and necessity require the proposed project;
- (2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;
- (3) The property described in the Resolution is necessary for the proposed project;
- (4) The offer required by Section 7267.2 of the Government Code has been made to the owner or owners of record; and

BE IT FURTHER RESOLVED, the People of the State of California, acting by and through The Central Valley Flood Protection Board, in the name of the Sacramento and San Joaquin Drainage District, are hereby authorized and empowered to acquire through the power of eminent domain, **0.06 acre of permanent levee and flood control easement**, as required for project purposes. Said property is situated in the County of Yolo, State of California. A description of the property and the rights to be acquired are attached as Exhibits A and B to this Resolution.

Reclamation Board Resolution No. 08-24

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The foregoing Resolution was adopted by The Central Valley Flood Protection Board,
State of California at Sacramento, California, on January 16, 2009.

Ben Carter, President

Date: _____

Maureen Doherty, Secretary

Date: _____

Approved as to Legal Form
and Sufficiency

Nancy Finch, Counsel for The Central
Valley Flood Protection Board

Date: _____